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SEP 16 1994

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

September 16, 1994

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
Washington, D.C. 20554

OUR FILE NO.
1043-101-65

DOCKET FILE COPY ORIGINAL

RE: MM Docket No. 94-72
RM No. 8479
Odessa and Los Ybanez, Texas

Dear Mr. Caton:

On behalf of Ruben Velasquez I transmit herewith the original and four copies of his Reply Comments in the above-referenced proceeding.

Kindly communicate any questions directly to this office.

Yours very truly,


John Wells King

JWK/jb
Enclosures

cc: John A. Karousos, Acting Chief
Allocations Branch, Room 8322, 2025 M Street
(with enclosure)

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Before The
Federal Communications Commission
Washington, D.C. 20554

RECEIVED
SEP 16 1994
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In The Matter Of)

Amendment of Section 73.202(b),)
Table of Allotments,)
FM Broadcast Stations)

(Odessa and Los Ybanez, Texas))

RM No. 8479
MM Docket No. 94-72

DOCKET FILE COPY ORIGINAL

TO: The Chief, Policy and Rules Division
Mass Media Bureau

Reply Comments Of Ruben Velasquez

On August 29, 1994, Israel Ibanez ("Ibanez") filed comments herein, and on August 31, 1994, New Frontier Communications, Inc. ("New Frontier") filed comments herein. Ruben Velasquez, proponent of the changes proposed in the Notice Of Proposed Rule Making And Order To Show Cause ("NPRM") adopted herein, hereby responds to those comments, and for his reply, states as follows:

Ibanez Comments

Ybanez objects to the proposed change of channel for his Station KYMI at Los Ybanez. He fears that a move from his present uncluttered dial position will cause audience diversion. He claims that Mr. Velasquez's presently authorized facilities for KADM are sufficient, and that Odessa is well-served.

None of these justifies denial of the proposed changes.

It is well-settled that no licensee has a vested right in a particular channel. Whether a station's nearby channels are occupied is irrelevant to the Commission's allocations touchstone, which is the fair, efficient, and equitable distribution of radio service throughout the United States.¹

Similarly, the fact that the Commission granted KADM a waiver of the community coverage rule for its presently-authorized facilities is no basis for denying Mr. Velasquez's proposal to improve his facilities, nor does it preclude him from seeking, as he has, to pursue such improvements.

Finally, the fact that Odessa is served by other radio stations is immaterial. When it allotted Channel 299C2, KADM's present channel, to Odessa, the Commission made the threshold finding that the community warranted an additional broadcast service. Here, by proposing a change to Channel 300C1, Mr. Velasquez seeks only to improve that service and to remove the service deficiency inherent in the Channel 299C2 allotment.

Mr. Velasquez acknowledges his responsibility to reimburse Ybanez for the reasonable and prudent expenses associated with the

¹ 47 U.S.C. § 307(b) (1993). *See, Churchville and Luray, Virginia*, 5 FCC Rcd 1106 (MMB 1990) ("[T]he substitution of an existing station's channel at one community serves the public interest where such change permits the provision of a new or expanded service in another community", *recon. denied*, 6 FCC Rcd 1313 (MMB 1991) ("We recognize that changing the channel of an existing station creates a potential for a temporary disruption to the listening habits of a station's audience. This does not override the public interest benefit of providing service to additional population."))

change in channel for KYMI, as identified by the Commission in *Circleville, Ohio*, 8 FCC2d 159 (1967).

New Frontier Comments

New Frontier objects to the proposed changes because, it alleges, (1) Mr. Velasquez got what he asked for by applying for a deficient allotment, (2) New Frontier plans to develop its KODM as a full Class C facility; (3) KYMI would be disrupted by a channel change; (4) the Odessa upgrade will exacerbate multiple ownership considerations; and (5) whether Mr. Velasquez can effectuate his proposal is questionable. New Frontier counterproposes to substitute Channel 250C for Channel 250C1 at Odessa, and either to delete Channel 299C2 or to allot it to Crane.

Nothing in New Frontier's comments justifies denial of the proposed changes. More significantly, New Frontier's counterproposal is unessential and gratuitous: it poses no conflict with the proposed KADM upgrade and can be effectuated by application without the need for rule making.

As to the first of New Frontier's allegations, having applied for and having been authorized to construct specified facilities does not preclude Mr. Velasquez from seeking improvements to them. This should be patently apparent to New Frontier, which acquired Class C1 facilities

that it states it intends to improve to Class C facilities. What's good for the goose is good for the gander.²

New Frontier's declaration of its intention to develop full Class C facilities for KODM is no bar to consideration of Mr. Velasquez's proposal. Indeed, the speculative KODM upgrade, if, as, and when pursued, *is not even mutually exclusive with the proposed KADM upgrade*. Thus, there was no need for New Frontier to file a counterproposal in this proceeding.³

Disruption to KYMI is no basis for denying Mr. Velasquez's improvements to KADM. That KYMI has never operated at a profit is entirely irrelevant; the Commission is not the guarantor of a profit. That KYMI might lose its "identity" or fail is utterly speculative. (Ybanez,

² New Frontier states that a better use of Channel 299C2 might be to relocate it to Crane, or to delete it altogether. Ironically, the present allotment at Crane is the root cause of the service deficiency inherent in the allotment of Channel 299C2 at Odessa.

The Commission chose Channel 299C2 as the new Odessa allotment after a Channel 267C2 allotment was originally sought. *Odessa, Texas*, 6 FCC Rcd 7011 (MMB 1991). The Odessa channel substitution was necessary due to the Commission's substitution of Channel 267C1 for Channel 265A at Crane, at the request of the permittee of KAIR(FM) there. *Id.*, at n. 1. The Odessa allotment was burdened with a 28.8-kilometer site restriction in order to protect KYMI at Los Ybanez. The effect of these actions was to improve the Crane station's ability to serve Odessa, and to impair the ability of a Channel 299C2 operation to serve Odessa.

³ Indeed, New Frontier can implement an upgrade of KODM to Class C status using the Commission's one-step application process. There is no need to invoke the Commission's rule making processes since no other changes are necessary to upgrade KODM. See the attached Technical Reply Comments of Jefferson G. Brock of Graham Brock, Inc., Mr. Velasquez's consulting engineer.

KYMI's licensee, did not even pose the threat of such dire results in his comments.)

Multiple ownership matters play no part in the Commission's channel allocation process, and are irrelevant here. For the record, Mr. Velasquez acquired AM Station KNDA (then KJJT), Odessa, in 1986. It was forced to go off the air in 1991, and in September that year, its antenna tower structure was destroyed. The KNDA license was surrendered, and the Commission has deleted the facilities. Mr. Velasquez was originally a principal of Mesa Entertainment, Inc., but resigned before the company was authorized to acquire KOZA(AM), Odessa, in 1989.⁴

Mr. Velasquez's experience with KNDA, which was a 250-watt daytime-only AM station, is no barometer of his plans for KADM, and is irrelevant to the proposed upgrade. As President and majority shareholder of an industrial enterprise that does business around the world, Mr. Velasquez has ample financial resources to construct and place KADM into operation.

The New Frontier counterproposal either to delete Channel 299C2 at Odessa (Option I) or to reallocate it to Crane (Option II) is plainly jocose and unworthy of serious Commission consideration.

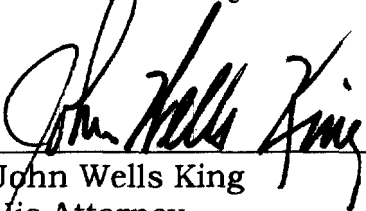
⁴ See the attached Declaration of Ruben Velasquez.

Conclusion

Neither Ybanez nor New Frontier has offered any basis for denial of the proposed changes at Odessa and Los Ybanez. The New Frontier counterproposal is unnecessary for an upgrade of KODM. Accordingly, Ruben Velasquez respectfully renews his request that the Commission adopt the proposal contained in the *Notice* issued herein.

Respectfully submitted,

RUBEN VELASQUEZ



John Wells King
His Attorney

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4350 North Fairfax Drive
Arlington, VA 22203-1633
703/841-0606

September 16, 1994

GRAHAM BROCK, INC.

BROADCAST TECHNICAL CONSULTANTS

TECHNICAL REPLY COMMENTS
MM DOCKET #94-72
RUBEN VELASQUEZ
ODESSA, TEXAS
September 1994

TECHNICAL EXHIBIT

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TECHNICAL REPLY COMMENTS
MM DOCKET #94-72
RUBEN VELASQUEZ
ODESSA, TEXAS
September 1994

1. This Technical Statement and attached exhibits were prepared on behalf of Ruben Velasquez ("Velasquez"), permittee of radio station KADM, Channel 299C2, Odessa, Texas. Velasquez is the petitioner in MM Docket #94-72 requesting the upgrade of KADM from Channel 299C2 to Channel 300C1. As outlined in the Petition for Rule Making, in order to effectuate this upgrade at Odessa, it is further necessary to substitute Channel 253C2 for Channel 300C2 at Los Ybanez, Texas. The substitution of channels at Los Ybanez can be made at the currently authorized site for KYMI.

BACKGROUND

2. During the comment period in MM Docket #94-72, New Frontier Communications, Inc. ("NFCI") filed comments and a counterproposal to the Velasquez request. NFCI is the licensee of radio station KODM, Channel 250C1, Odessa, Texas. The NFCI counterproposal requested the allocation of Channel 250C to Odessa and the denial of the Velasquez request at Odessa and the necessary channel substitution at Los Ybanez. In another option forwarded by NFCI as an alternative to their denial of the Velasquez request, they suggest that, in addition to the allocation of Channel 250C to Odessa for use by KODM, Channel 299C2, presently allocated to Odessa, be allocated to Crane, Texas, instead, with no change in the allotment at Los Ybanez.

DISCUSSION

3. NFCI in its comments and counterproposal notes that the former licensee of KODM through "various problems encountered" allowed Channel 250C at Odessa to be downgraded to Channel 250C1 through the cancellation of a construction permit for the station. NFCI requests the return to Class C status for KODM which they imply would be in conflict with the Velasquez proposal for Channel 300C1 at Odessa. NFCI requests the allotment of Channel 250C at North Latitude 31° 39' 34" and West Longitude 102° 17' 38". As is evident on Exhibit #1, Channel 250C at the above coordinates meets the Commission's minimum distance separation requirements to all licensed, applied for or proposed facilities, including the Channel 300C1 proposal at Odessa and the Channel 253C2 proposal at Los Ybanez. There is no electromagnetic incompatibility between Channel 250C and the Velasquez proposal. It would have been a simple matter for NFCI to file FCC Form 301 seeking an upgrade by application to return to Class C status at the site specified in their comments. There was no need for NFCI to file a counterproposal, since it is not mutually exclusive with the Velasquez requests.¹

1) The only potential for any minor conflict between NFCI's request and the Velasquez proposal would be if NFCI sought to improve the facilities of KODM at the licensed Channel 250C1 transmitter site at North Latitude 31° 47' 40" and West Longitude 102° 10' 44". Channel 250C is shortspaced to the proposed Los Ybanez Channel 253C2 request by 1.11 kilometers. It is only 103.89 kilometers from the proposed Los Ybanez reference site rather than the 105.0 kilometers required under §73.207 of the Commission's rules. However, it is apparent that NFCI has selected a reference site other than its current licensed site. Therefore, should NFCI desire to locate in closer proximity to its licensed site it has sufficient area to do so. Further it would be possible for KODM to improve its facilities to minimum Class C at the authorized KODM C1 transmitter site utilizing §73.215 of the Commission's rules fully protecting the Los Ybanez proposal.

4. As a second option, NFCI has requested the reallocation of Channel 299C2 from Odessa to Crane, Texas, maintaining the class of the station simply to allow for expanded usable area for Channel 299C2. Velasquez' request is for the allotment of Channel 300C1 to Odessa and the substitution as outlined above at Los Ybanez, Texas. Velasquez has not requested a change of community of license.

5. Therefore, Velasquez requests the Commission amend §73.202(b) of its rules as follows:

Odessa, Texas

Present

241C2, 245C1
250C1, 256C, 299C2

Proposed

241C2, 245C1,
250C1, 256C, 300C1²

Los Ybanez

Present

300C2

Proposed

253C2

6. The foregoing Technical Statement and exhibit were prepared on behalf of Ruben Velasquez, by Graham Brock, Inc., his Technical Consultants. All information contained herein is true and accurate to the best of our belief and knowledge. All data

- 2) NFCI requested the allocation of Channel 250C to Odessa, Texas. However, implementation of that upgrade can be made using the Commission's one-step application process. Simply filing an application specifying Channel 250C at Odessa is sufficient, since no other changes are necessary to implement that upgrade. As such, NFCI's request is not being considered as one of the proposed channels for Odessa.

relating to FM allocations and assignments was extracted from the NTIA database, updated July 28, 1994. We assume no liability for errors or omissions in that database which may be adverse to the requests contained herein.

CLEARANCE STUDY FOR CHANNEL 250C ODESSA, TEXAS
USING NFCI PROPOSED REFERENCE SITE

REFERENCE 31 39 34 N 102 17 38 W	CLASS C Current rules spacings CHANNEL 250 - 97.9 MHz	DISPLAY DATES DATA 07-28-94 SEARCH 09-14-94
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CALL TYPE	CH# LAT	CITY LNG	STATE PWR	BEAR' HT	D-KM D-Mi	R-KM R-Mi	MARGIN (KM)
KODM	250C1	Odessa	TX	36.1	18.52	270.0	-251.48
LI CN	31 47 40	102 10 44	100.000 kW	110M	11.5	167.8	
	D & F Communications, L.P.				BLH-810804AG		
ALOPEN	252A	Big Lake	TX	121.1	103.92	95.0	8.92
AL N	31 10 30	101 21 30	0.000 kW	0M	64.6	59.0	
	#14185	WO= 850613			850713		
ALOPEN	247C	Pecos	TX	245.7	115.94	105.0	10.94
AL N	31 13 45	103 24 20	0.000 kW	0M	72.1	65.3	
	MM Docket #84-231 >First Come/First Served Allotment						
AD 253	253C2	Los Ybanez	TX	11.9	120.50	105.0	15.50
AD	32 43 22	102 01 50	0.000 kW	0M	74.9	65.3	
	Ruben Velasquez				RM-8479		940517
KPTX	252A	Pecos	TX	257.8	117.54	95.0	22.54
LI CN	31 26 09	103 30 14	3.000 kW	35M	73.1	59.0	
	Parday, Inc.				BLH-810722AB		
KKCL	251C2	Lorenzo	TX	13.8	222.58	188.0	34.58
LI CN	33 36 32	101 43 45	50.000 kW	133M	138.3	116.8	
	American General Media of Tex				BLH-880520KC		
KOAX.C	250C2	Mason	TX	112.8	296.45	249.0	47.45
CP CN	30 37 25	99 25 41	50.000 kW	150M	184.2	154.8	
	Laser Communications, Inc.				BPH-881027ML		931107
	>to Channel 249C2 per MM Docket #89-84						

CHANNEL 250C SPACING STUDY

EXHIBIT #1
TECHNICAL REPLY COMMENTS
MM DOCKET #94-72
RUBEN VELASQUEZ
ODESSA, TEXAS

September 1994

GRAHAM BROCK, INC.

BROADCAST TECHNICAL CONSULTANTS

AFFIDAVIT AND QUALIFICATIONS OF CONSULTANT

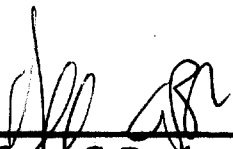
State of Georgia)
St. Simons Island) ss:
County of Glynn)

JEFFERSON G. BROCK, being duly sworn, deposes and says that he is an officer of Graham Brock, Inc. Graham Brock has been engaged by Ruben Velasquez, permittee of Radio Station KADM, to prepare the attached Technical Exhibit.

His qualifications are a matter of record before the Federal Communications Commission. He has been active in Broadcast Engineering since 1979.


The attached report was either prepared by him or under his direction and all material and exhibits attached hereto are believed to be true and correct.

This the 14th day of September, 1994



Jefferson G. Brock
Affiant

*Sworn to and subscribed before me
this the 14th day of September, 1994*



Notary Public, State of Georgia
My Commission Expires: September 8, 1995

DECLARATION OF RUBEN VELASQUEZ

I, Ruben Velasquez, do hereby declare and state the following:

I am President and majority stockholder of Midessa Industrial Vinyl Company in Odessa, Texas, a supplier of industrial linings. I founded Midessa in 1978, and today the company contracts its services around the world. My ownership interest in Midessa will readily provide me with the financial resources to construct and place KADM into operation.

Broadcasting is not my primary business. I do not, and need not, depend on it as a source of income. Broadcasting does, however, represent to me one tangible way that I can serve the Hispanic community in Odessa and surrounding areas.

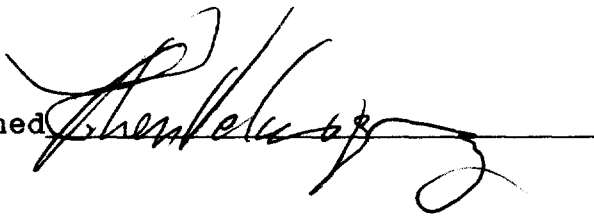
I have been involved in broadcasting since 1986, when I acquired a controlling interest in L & T Enterprises, which operated Station KNDA (then-KJJT), a 250-watt daytime-only AM station in Odessa. KNDA was a modest beginning. Since my entry into broadcasting it has been my goal to provide the Hispanic community in Odessa and surrounding area with a strong, responsive, wide-area program service. My proposal for KADM will achieve that goal.

Even with its limited facilities, KNDA served its audience well. In the spring of 1991, however, due to depressed economic conditions in the area generally, the station was forced to go off the air. In September 1991, the antenna tower structure collapsed when an automobile struck one of the supporting guy wires. The tower was not rebuilt, and in August 1994, the KNDA license was surrendered for cancellation.

With my business partner in Midessa, Agustin G. Mesa, I formed Mesa Entertainment, Inc. for the purpose of acquiring AM Station KOZA in Odessa, in 1989. The station had been silent for three years. I was President of Mesa Entertainment. Mr. Mesa and my four children were stockholders. I requested a waiver of the rules to permit my involvement in both KNDA and KOZA. As a result of informal discussions between my FCC attorney and the FCC staff, I resigned from the company. Its stock was placed in trust for the benefit of my children. Mr. Mesa became trustee of the trust and the sole officer and director of Mesa Entertainment. The company acquired KERB AM/FM in Kermit, Texas in 1992.

Pursuant to Section 1.16 of the Commission's Rules and Regulations, I declare under penalty of perjury that the foregoing is true and correct. Executed on September 15, 1994.

Signed

A handwritten signature in black ink, written over a horizontal line. The signature is stylized and appears to be "Shenkel" followed by a flourish.

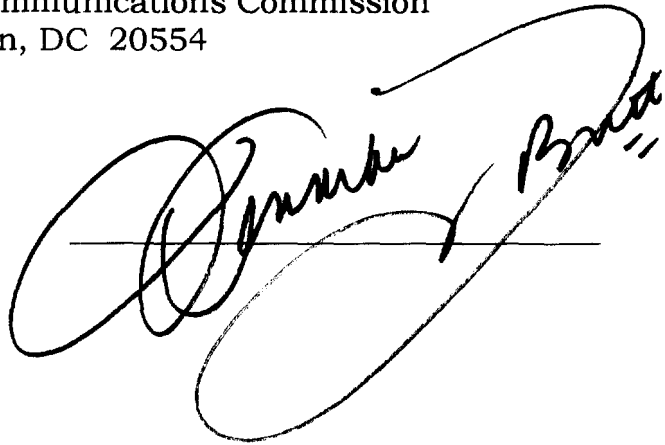
CERTIFICATE OF SERVICE

The undersigned, an employee of Haley, Bader & Potts, hereby certifies that the foregoing document was mailed this date by First Class U.S. Mail, postage prepaid, or was hand-delivered*, to the following:

James K. Edmundson, Esquire
Gardner, Carton & Douglas
1301 K Street, N.W.
Suite 900, East Tower
Washington, D.C. 20005
Counsel for Israel Ybanez

Barry D. Wood, Esquire
Jones, Waldo, Holbrook & McDonough, P.C.
Suite 900
2300 M Street, N.W.
Washington, D.C. 20037
Counsel for New Frontier Communications, Inc.

Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau
Federal Communications Commission
Washington, DC 20554

A large, stylized handwritten signature in black ink, likely belonging to James K. Edmundson, is written over a horizontal line. The signature is cursive and somewhat abstract, with a large loop at the end.

September 16, 1994